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TREASURY FOR OCC/EILEEN SIEGEL
TREASURY ALSO FOR OASIA/ICB/VIMAL ATUKORALA
TREASURY PLEASE PASS TO FEDERAL RESERVE AND SEC/E.JACOBS
JUSTICE FOR DOJ/CRM/ATMLS AND FOR OIA/RICHARD OWENS
FBI FOR CID

E.O. 12958: N/A

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SUBJECT: Politicians Slam Austrian BAWAG Bank for Closing Cuban
Accounts

REF: VIENNA 0117

¶1. Summary: BAWAG P.S.K. bank, which the U.S. investment fund Cerberus Capital Management bought in early 2007, has come under harsh criticism for terminating the accounts of some 100 Cuban customers. Austrian Foreign Minister Ursula Plassnik announced in parliament on April 26 that she had introduce administrative penalty procedures against BAWAG. End Summary.

¶2. In early January 2007, the U.S. investment fund Cerberus Capital Management purchased the scandal-ridden and financially troubled BAWAG P.S.K. (BAWAG) bank, Austria's fourth largest banking group (see reftel). On April 13, the news broke that, prior to the May 2007 closing of the deal with Cerberus, BAWAG had informed about 100 customers that it was terminating their accounts because of their Cuban nationality. Reportedly, Cerberus had instructed BAWAG to take this action pursuant to U.S. law. Contrary to press reports citing the Libertad Act ("Helms-Burton"), the bank apparently took this action in view of the Trading With the Enemy Act.

¶3. BAWAG's move raised considerable negative attention in Austria, with politicians and commentators alleging an "extraterritorial" application of U.S. law to Austria. On April 26, Austrian Foreign Minister Plassnik told parliament that she would take legal action, stating, "Austria is not the 51st State of the U.S. and therefore U.S. law does not apply."

¶4. Plassnik was in parliament for the debate on the foreign affairs budget. In that context, she announced that she introduced administrative penalty procedures against BAWAG pursuant to EU Council Regulation (EC) No 2271/96 of 22 November 1996. This regulation concerns protection against the effects of the extra-territorial application of legislation adopted by a third country.

¶5. A BAWAG spokesman said the bank does not believe that it has committed any violation of law in connection with the termination of the Cubans' accounts. The bank has argued that its upcoming acquisition by Cerberus requires BAWAG's business operations to comply on the group level with U.S. laws. However, BAWAG Director General Ewald Nowotny said the bank had made "mistakes" in handling the issue. A BAWAG spokesman has announced that the bank would seek special authorization from U.S. authorities to resume serving Cuban nationals.

¶6. The Austrian legal situation seems unclear. Some experts argue that BAWAG's action constitutes discrimination, and is a human rights violation. However, according to Peter Kolba, head of the legal office of the Austrian Consumer Information Association, Austrian civil law regulations permit banks to terminate a customer's account at any time without stating any reasons, as long

as the bank observes certain time limits. Kolba noted that the termination of accounts was probably legally permissible, but he said he considered BAWAG's stated reasons to be "morally" questionable.

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